

Criminal Procedure Regulation 2017

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New South Wales

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New South Wales

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Criminal Procedure Regulation 2017



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Criminal Procedure Regulation 2017*.

2 Commencement

This Regulation commences on 1 September 2017 and is required to be published on the NSW legislation website.

Note—

This Regulation replaces the *Criminal Procedure Regulation 2010*, which is repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

community service order means a community service order under the *Crimes (Sentencing Procedure) Act 1999*.

Criminal Listing Director has the same meaning that it has in Part 3 of Chapter 3 of the Act.

Department means the Department of Justice.

good behaviour bond means a good behaviour bond under the *Crimes (Sentencing Procedure) Act 1999*.

Secretary means the Secretary of the Department.

the Act means the *Criminal Procedure Act 1986*.

Note—

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule

1.

- (3) Notes included in this Regulation (except in Schedule 1) do not form part of this Regulation.

Part 2 Listing of criminal proceedings

4 Information for Criminal Listing Director

- (1) The Criminal Listing Director may direct any of the following persons to give to the Director any information to assist the Director in making arrangements for the listing of criminal proceedings that the Director reasonably requires:
- (a) a prosecuting authority,
 - (b) an accused person or appellant,
 - (c) an Australian legal practitioner acting for an accused person or appellant,
 - (d) a registrar.
- (2) A person to whom a direction is given must comply with the direction without delay.
- (3) The Criminal Listing Director must not give to a prosecuting authority any information furnished to the Director by an accused person or appellant (or by the Australian legal practitioner of an accused person or appellant) in response to a direction under this clause except with the consent of the accused person, appellant or Australian legal practitioner.
- (4) The Criminal Listing Director must not give to an accused person or appellant (or to any person acting in the interest of an accused person or appellant) any information furnished to the Director by a prosecuting authority in response to a direction under this clause except with the consent of the prosecuting authority.

5 Notice of appearance

- (1) An Australian legal practitioner:
- (a) who acts for an accused person or appellant in any criminal proceedings, and
 - (b) who has not filed a notice of appearance in the proceedings in the Local Court that led to those criminal proceedings,
- must file a notice of appearance, in the court in which the criminal proceedings are to be heard, as soon as practicable after accepting instructions to so act.
- (2) A notice of appearance must be in the form of a document signed by or on behalf of the Australian legal practitioner filing it containing:
- (a) the full name of the accused person or appellant for whom the Australian legal

practitioner acts, and

- (b) the full name, address and telephone number of the Australian legal practitioner.
- (3) An Australian legal practitioner who ceases to act for an accused person or appellant in any criminal proceedings must file a notice of ceasing to act, in the court in which the proceedings are to be heard, as soon as practicable after ceasing to so act.
- (4) Subclause (3) does not apply if a notice of appearance for the accused person or appellant has already been filed by another Australian legal practitioner.
- (5) As soon as practicable after a notice under this clause is filed, the registrar with whom the notice is filed must give a copy of the notice to the Director of Public Prosecutions and to the Criminal Listing Director.

6 Transcript

- (1) The Director of Public Prosecutions must notify the Criminal Listing Director and the relevant registrar of the Local Court:
 - (a) if a written transcript of the proceedings in the Local Court that led to the committal for trial of an accused person is not received by the Director of Public Prosecutions within the prescribed time after the accused person was committed for trial, or
 - (b) if a written transcript of the proceedings in the Local Court that led to an appeal is not received by the Director of Public Prosecutions within the prescribed time after the appellant lodged notice of the appeal under Part 3 of the [Crimes \(Appeal and Review\) Act 2001](#).
- (2) For the purposes of this clause, the **prescribed time** is:
 - (a) 2 weeks, in the case of an accused person under 21 years of age who is in custody for the offence the subject of the proceedings, or
 - (b) 4 weeks, in any other case.
- (3) The Criminal Listing Director must take information received under this clause into account in fixing any date for the hearing or mention of the matter before the Supreme Court or the District Court.

7 Notice of readiness

- (1) The Director of Public Prosecutions must, as soon as practicable after determining that criminal proceedings are ready to proceed on the part of the Crown, give the Criminal Listing Director a notice of readiness for the proceedings.
- (2) The notice must be in the form approved for the time being by the Criminal Listing Director and must be accompanied by a draft of the indictment proposed to be

presented in the proceedings.

- (3) The Criminal Listing Director must, as soon as practicable after receiving the notice:
 - (a) give a copy of the notice, and of the draft indictment that accompanies the notice, to the registrar of the relevant court, and
 - (b) give a copy of the draft indictment to each accused person or the accused person's Australian legal practitioner.
- (4) The Director of Public Prosecutions must, as soon as practicable after determining that the indictment to be presented in any criminal proceedings is to depart in any material particular from the draft indictment that accompanied the notice of readiness for the proceedings, give the Criminal Listing Director a draft of the indictment then proposed to be presented in the proceedings.
- (5) The later draft must contain a notice, in the form approved for the time being by the Criminal Listing Director, indicating the nature and extent of the departures from the earlier draft.
- (6) The Criminal Listing Director must, as soon as practicable after receiving a draft indictment under subclause (4), give a copy of the draft indictment to the registrar and to each accused person or the accused person's Australian legal practitioner.

8 Application to stay indictment

- (1) This clause applies to:
 - (a) any application to the Supreme Court or District Court for an order staying or quashing an indictment, and
 - (b) any demurrer to an indictment.
- (2) Unless the court otherwise orders, an application or demurrer to which this clause applies must not be listed for hearing unless it has been filed within the prescribed time after a copy of the draft indictment was given to the accused person or the accused person's Australian legal practitioner under clause 7 (3) or (6).
- (3) For the purposes of this clause, the **prescribed time** is:
 - (a) 1 month, in the case of an accused person who is in custody for the offence to which the indictment relates, or
 - (b) 3 months, in any other case.

9 Notice of listing

- (1) The Criminal Listing Director must, as soon as practicable after fixing a date for the hearing or mention of any criminal proceedings, give notice of the listing to the

registrar of the relevant court.

- (2) The registrar must, as soon as practicable after receiving notice of the listing, cause written notice of the listing to be served, in accordance with the rules of court, on the Director of Public Prosecutions and each accused person or appellant in the proceedings.

Part 2A Committal proceedings

Division 1 Committal process

9A Oral explanation of committal process

For the purposes of section 59 (3) of the Act, the oral explanation of the committal process is to be in or to the effect of the following (as applicable to the accused person):

Charge certificate

The prosecutor has given you or your lawyer a charge certificate. The charge certificate shows all the offences that the prosecutor intends to proceed with if your case goes to trial in the District Court/Supreme Court [*specify correct court*].

Case conference (if accused has legal representation)

[Include only if the accused person is represented by a legal practitioner]

Your case will now be adjourned so that your lawyer and the prosecutor can discuss your case at a case conference. The case conference is to help you decide whether to plead guilty or not guilty to the charges against you and to discuss any offers that may be made.

You must be available to give your lawyer instructions during the case conference and your lawyer will arrange this.

After the case conference, a certificate will be prepared by the prosecutor and your lawyer as a record of the conference. What is in the case conference certificate is confidential.

After the case conference you will come back before a Magistrate.

What happens next (if accused has no legal representation)

[Include only if the accused person is not represented by a legal practitioner]

Your case will now be adjourned so that you can decide if you want to plead guilty or not guilty to the offences on the charge certificate. If you wish to contact the prosecutor about the offences listed in the charge certificate, you can do so in writing.

You may wish to get legal representation or legal advice about your case while your case is adjourned. This may be available from Legal Aid NSW.

After the adjournment you will come back before a Magistrate.

Committal for trial or sentence

The Magistrate will ask you whether you plead guilty or not guilty to each offence proceeding.

If you plead guilty, the Magistrate will send your case to the District Court/Supreme Court [*specify correct court*] to decide your sentence. If you plead not guilty, the Magistrate will send your case to the District Court/Supreme Court [*specify correct court*] for trial.

Statutory sentencing discount for guilty pleas

[Include if the accused person is an offender to whom the discount scheme under Division 1A of Part 3 of the [Crimes \(Sentencing Procedure\) Act 1999](#) applies]

If you plead guilty to an indictable offence, you may get a discount on your sentence. The amount of the discount depends on when you plead guilty and you should seek legal advice about it.

You will be given some written information with more details about the committal process and the sentencing discounts that may be available.

9B Written explanation of committal process

For the purposes of section 59 (3) of the Act, the written explanation of the committal process is to be in or to the effect of the following (as applicable to the accused person):

Purpose of committal proceedings

This explanation is being given to you because you are facing criminal charges at a committal proceeding. The purposes of the committal proceeding are:

- (i) for the prosecutor to decide which criminal charges against you are proceeding, and
- (ii) for you to decide whether to plead guilty or not guilty to those offences.

At the end of the committal proceeding your case will be sent to the District Court or Supreme Court for trial if you plead not guilty or to decide your sentence if you plead guilty.

Charge certificate

The prosecutor has given you or your lawyer a charge certificate. The charge certificate shows all the offences the prosecutor intends to proceed with if your case goes to trial in the District Court or Supreme Court.

Case conference (if accused has legal representation)

Your case will be adjourned so that your lawyer and the prosecutor can discuss your

case at a case conference. Your lawyer will arrange the case conference. The case conference is to help you decide whether to plead guilty or not guilty to the charges against you and to discuss any offers that may be made. At the case conference other issues that relate to your case can also be discussed.

You must be available to give your lawyer instructions during the case conference and your lawyer will arrange this.

If the prosecutor and your lawyer agree, you may be present at the conference.

After the case conference, a case conference certificate will be prepared and signed by the prosecutor and your lawyer. The certificate will show any offers made by you to plead guilty to an offence and whether the offers were accepted. The certificate will also show any offers made by the prosecutor to accept a guilty plea to another offence. It will also show any agreed facts (if a guilty plea offer is accepted).

Your lawyer must explain the statutory sentencing scheme for guilty pleas to you if it applies to your case. You may also be asked to sign the certificate.

What is in the case conference certificate is confidential. It is an offence to publish any information in the certificate.

However, if you are found guilty of an offence the court that decides your sentence will be given the case conference certificate. What is said in the certificate can affect whether you get a sentence discount. The court may use your certificate when deciding your sentence. You should ask your lawyer if you have any questions about this.

After the case conference you will come back before a Magistrate.

What happens next (if accused has no legal representation)

Your case will now be adjourned so that you can seek legal advice and decide if you want to plead guilty or not guilty to the offences on the charge certificate. If you wish to contact the prosecutor about the offences listed in the charge certificate, you can do so in writing.

You may wish to get legal representation or legal advice about your case while your case is adjourned. This may be available from Legal Aid NSW.

After the adjournment you will come back before a Magistrate.

Examination of prosecution witnesses

At any time after you or your lawyer is given the charge certificate, you can ask a Magistrate to direct that one or more of the prosecution witnesses come to court to give evidence in the committal proceedings. The Magistrate will apply certain tests to determine whether to grant the request. If the Magistrate refuses, the Magistrate will

give reasons for the refusal.

The Magistrate must give the direction if the prosecutor agrees to your request. However, if the witness is the alleged victim of an offence involving violence, the Magistrate may give the direction only if the Magistrate believes there are special reasons why, in the interests of justice, the witness should attend.

Some alleged victims of child sexual offences or other sexual offences cannot be asked to come to court to give evidence.

Committal for trial or sentence

A Magistrate will ask you whether you plead guilty or not guilty to each offence on the charge certificate. You can also plead guilty at any other time.

If you plead guilty, the Magistrate will send your case to the District Court or Supreme Court to decide your sentence. This is called committal for sentence.

If you plead not guilty, the Magistrate will send your case to the District Court or Supreme Court for trial. This is called committal for trial.

Statutory sentencing discount for guilty pleas (if the discount scheme under Division 1A of Part 3 of the [Crimes \(Sentencing Procedure\) Act 1999](#) applies)

If you plead guilty to an indictable offence, you may get a discount on your sentence. The amount of discount depends on when you plead guilty.

If you plead guilty before the end of the committal proceedings in the Local Court, that discount may be 25%.

If you plead guilty after you are committed for trial and at least 14 days before the date your matter is first listed for trial, that discount may be 10%. This includes if you plead guilty in court or give the prosecutor a written offer to plead guilty.

If you plead guilty after 14 days before the date your matter is first listed for trial, that discount may be 5%.

The discount scheme does not apply to Commonwealth offences and serious children's indictable offences, and you should ask your lawyer for advice or get legal advice about this.

9C Prosecutors who may exercise charge certificate and case conference functions

For the purposes of section 65 (d) of the Act, the following persons may exercise the functions of a prosecutor under Divisions 4 and 5 of Part 2 of Chapter 3 of the Act:

- (a) a person referred to in section 65 (b) of the Act, in the case of a committal proceeding for a State offence,

- (b) a person appointed by the Commonwealth Director of Public Prosecutions to exercise any of the Director's functions under Divisions 4 and 5 of Part 2 of Chapter 3 of the Act,
- (c) a legal representative of a person referred to in paragraph (a) or (b).

9D Charge certificates

For the purposes of section 66 (1) of the Act, a charge certificate must be in Form 1A.

9E Availability of accused persons to give instructions for purposes of case conference

- (1) An accused person is to be available to give instructions to the accused person's legal representative during a case conference.
- (2) The legal representative of an accused person must, if appropriate to assist the accused person, ensure that a support person or an interpreter is available when the accused person is giving instructions to the accused person's legal representative during a case conference.
- (3) The legal representative of an accused person, and any person in whose custody any such accused person is kept, has a duty to ensure, so far as is reasonably practicable, that the accused person is available to give instructions during a case conference.
- (4) An accused person who is not in custody is taken to be available to give instructions if the person is able to give instructions in person or, if that is not reasonably practicable or is not appropriate for any reason, by audio visual link or telephone.
- (5) An accused person who is in custody is taken to be available to give instructions if the person is able to give instructions in person or by audio visual link or, if that is not reasonably practicable, by telephone.
- (6) A failure by a person to comply with this clause does not affect the validity of anything done or omitted to be done in or for the purposes of the committal proceedings.

9F Attendance of accused persons at case conferences

- (1) An accused person may attend part or all of the discussions between the prosecutor and the accused's legal representative at a case conference in person, by audio visual link or by telephone, if the prosecutor and the accused person's legal representative consent.
- (2) The legal representative of an accused person who so attends part or all of a case conference must, if appropriate to assist the accused person, ensure that a support person or an interpreter attends the case conference.
- (3) A failure by a person to comply with this clause does not affect the validity of

anything done or omitted to be done in or for the purposes of the committal proceedings.

9G Case conference certificates

- (1) For the purposes of section 75 (1) of the Act, a case conference certificate must be in Form 1B.
- (2) Any matters set out in the form that are in addition to the matters specified in section 75 (1) of the Act are prescribed for the purposes of section 75 (1) (j) of the Act.

Division 2 Witness statements in committal proceedings

9H Application of Division

This Division applies to a statement to which Part 3A of Chapter 6 of the Act applies.

9I Endorsement of written statements

- (1) For the purposes of section 283B (3) of the Act, a written statement must be endorsed as follows:

This statement made by me accurately sets out the evidence that I would be prepared, if necessary, to give in court as a witness. The statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I will be liable to prosecution if I have wilfully stated in it anything that I know to be false or do not believe to be true.

- (2) In the case of a person who is under the age of 18 years, or an adult who is apparently of appreciably below average intelligence, it is sufficient if the endorsement includes:
 - (a) words to the effect that the statement is true, or
 - (b) words to the effect that the statement contains no lies.
- (3) A written statement that is in a language other than English and has a document purporting to contain an English translation of the statement or part annexed to it in accordance with section 283B (5) of the Act must also have annexed to it a certificate by the translator stating his or her qualifications and certifying that the translation is a correct translation of the document.

9J Addresses, dates of birth and phone numbers not to be disclosed on written statements

- (1) A copy of a written statement served on an accused person must not disclose the address, date of birth or telephone number of the person who made the statement or of any other living person, unless:

- (a) the address, date of birth or telephone number is a materially relevant part of the evidence, or
 - (b) a Magistrate makes an order permitting the disclosure in the statement.
- (2) An application for an order permitting the disclosure may be made by the accused person or the prosecutor.
 - (3) The Magistrate must not make the order unless satisfied that the disclosure is not likely to present a reasonably ascertainable risk to the welfare or protection of any person or that the interests of justice (including the accused person's right to prepare properly for the hearing of the evidence for the prosecution) outweigh any such risk.
 - (4) This clause does not prevent the disclosure of an address in a written statement if the statement does not identify it as a particular person's address, or it could not reasonably be inferred from the statement that it is a particular person's address.
 - (5) An address, date of birth or telephone number that must not be disclosed may, without reference to the person who made the written statement, be deleted from the statement, or rendered illegible, before the statement is served on the accused person.
 - (6) In this clause, **address** includes residential address, business address, email address and web-based address.

9K Signing of written statements by maker or another person on the maker's behalf

- (1) A written statement must be signed by the person who made the statement.
- (2) If the person is unable to sign the written statement, the statement may be signed by another person with the consent of and in the presence of the person who made the statement.
- (3) The other person must sign an endorsement on the statement to the effect that the person signed the statement on behalf of, with the consent of and in the presence of the person who made the statement.
- (4) A written statement must also be signed, as a witness, by a person who witnessed the signing of the statement by the person who made the statement or by another person signing on the maker's behalf (if applicable).

9L Presumptions about age and language

- (1) In any proceedings it is presumed, if there is no evidence to the contrary, that the age specified in a statement is in fact the age of the person who made the statement at the time the statement was made.
- (2) In any proceedings it is presumed, if there is no evidence to the contrary, that the

language in which a written statement or an endorsement is written is a language of which the person who made the statement or endorsement has a reasonable understanding.

- (3) In any proceedings it is presumed, if there is no evidence to the contrary, that the English translation of a statement or part statement is an accurate translation of the statement or part.

9M Presumptions about signatures on written statements

- (1) In any proceedings it is presumed, if there is no evidence to the contrary, that a signature on a written statement purporting or appearing to be the signature of the person who made it, or a person who signed on behalf of the maker, or a witness to the signing of the statement, is the signature of the person concerned.
- (2) In any proceedings it is presumed, if there is no evidence to the contrary, that a statement purporting or appearing to be signed by another person on behalf of the person who made the statement in accordance with this Division has been so signed.

Part 3 Court costs levy

10 Court costs levy

For the purposes of section 211A (1) of the Act, the amount of the court costs levy is \$85.

11 Exemption from liability to pay levy

For the purposes of section 211A (2) (e) of the Act, a conviction recorded before 13 May 2013 is exempt from the liability to pay the court costs levy.

Note—

In this clause, a reference to a conviction includes a reference to an order made under section 10 of the [Crimes \(Sentencing Procedure\) Act 1999](#) (see section 211A (8) of the [Criminal Procedure Act 1986](#)).

Part 4 Fees

12 Amounts payable in relation to court proceedings

- (1) The fee that a person must pay to the Supreme Court, the Land and Environment Court, the District Court or the Local Court in respect of a matter referred to in Part 1 of Schedule 2 is the fee specified in that Part in respect of that matter.
- (2) Despite subclause (1), no fee is payable for a copy of the print out of any record of committal proceedings conducted in the Local Court by means of an ECM system within the meaning of Schedule 1 to the [Electronic Transactions Act 2000](#).

13 Amounts payable in relation to Sheriff's functions

The fee that a person must pay to the Sheriff in relation to a matter referred to in Part 2 of

Schedule 2 is the fee specified in that Part in respect of that matter.

14 Persons by and to whom fees are payable

- (1) Any fee imposed by Schedule 2 is payable, by the person at whose request the relevant document is filed or service rendered:
 - (a) in the case of a fee imposed by Part 1 of Schedule 2, to the registrar of the court concerned, and
 - (b) in the case of a fee imposed by Part 2 of Schedule 2, to the Sheriff or the registrar of the court concerned.
- (2) If a document is filed or service rendered at the request of a person acting as agent for another person, each of those persons is jointly and severally liable for payment of the fee.

15 When fees become due

- (1) A fee imposed by Schedule 2 becomes due when the document concerned is filed or the service concerned is rendered.
- (2) Despite subclause (1), a registrar who is requested to file a document or render a service may require any fee for the document or service to be paid before the document is filed or the service rendered.

16 General power to waive, postpone and remit fees

- (1) The registrar of a court may, by order in writing, direct that the whole or any part of any fee payable to the court be waived, postponed or remitted, subject to any conditions that the registrar thinks fit to impose.
- (2) The Sheriff may, by order in writing, direct that the whole or any part of any fee payable to the Sheriff be waived, postponed or remitted, subject to any conditions that the Sheriff thinks fit to impose.
- (3) The powers conferred by this clause are to be exercised in accordance with any guidelines that may from time to time be published by the Attorney General.

17 Postponement of fees for legally assisted persons

- (1) The taking of any fee in respect of the business of the court in relation to proceedings involving a party who is a legally assisted person is, if the fee is payable by the party, to be postponed until judgment has been given in the proceedings.
- (2) The fee is not to be taken at all, or if taken must be remitted, if:
 - (a) judgment in the proceedings is against the legally assisted person, or

(b) judgment is in favour of the legally assisted person, but costs are not awarded in his or her favour.

(3) In this clause:

legally assisted person means a person who is receiving legal assistance through a community legal service within the meaning of the [Legal Profession Uniform Law \(NSW\)](#).

18 Court fees payable by certain NSW Government agencies or statutory bodies representing the Crown

For the purposes of section 4A (2A) of the Act, the NSW Government agencies and statutory bodies representing the Crown set out in Schedule 3 are prescribed.

Part 5 Recorded interviews with vulnerable persons

19 Definitions

In this Part:

defence notice means a notice given by an accused person or his or her Australian legal practitioner under clause 21.

prosecuting authority, in relation to a prosecution, means the Director of Public Prosecutions, or a police officer, who is responsible for the conduct of the prosecution.

prosecuting authority notice means a notice given by a prosecuting authority under clause 20.

recorded interview means a recording made by an investigating official of an interview during which a vulnerable person is questioned by an investigating official in connection with the investigation of the commission or possible commission of an offence by the vulnerable person or any other person.

responsible person means a person named in a prosecuting authority notice as referred to in clause 20 (2) (d).

vulnerable person has the same meaning as it has in Part 6 of Chapter 6 of the Act.

20 Prosecuting authority notice

(1) For the purposes of section 306V (2) of the Act, if a prosecuting authority intends to adduce evidence in a criminal proceeding of a previous representation:

(a) by a vulnerable person who is not the accused person, and

(b) wholly or partly by means of a recorded interview or a transcript of a recorded interview,

the prosecuting authority must notify the accused person or his or her Australian legal practitioner (if any) of the intention in accordance with this clause.

(2) A notice under subclause (1) must:

- (a) be in writing, and
- (b) specify each recorded interview (or transcript of the interview) that the prosecuting authority intends to adduce, and
- (c) contain information to the effect that the accused person and his or her Australian legal practitioner are entitled to listen to or view each recorded interview at a police station or other place nominated by the prosecuting authority, and
- (d) set out the name of a person responsible for arranging access to each recorded interview.

(3) A notice under subclause (1) must be given to the accused person or his or her Australian legal practitioner at least 14 days before the evidence for the prosecution is given in the proceeding.

Note—

Section 76 of the Act provides that a transcript of a recorded interview is not admissible in committal proceedings unless the accused person has been given, in accordance with the regulations under section 306V (2) of the Act, a reasonable opportunity to listen to or view the recorded interview.

21 Defence notice

(1) An accused person or Australian legal practitioner who receives a prosecuting authority notice may notify the responsible person that he or she requires access to any one or more of the recorded interviews specified in the notice.

(2) A notice under subclause (1) must:

- (a) be in writing, and
- (b) set out the name of the accused person and his or her Australian legal practitioner (if any), and
- (c) specify the recorded interview or interviews to which the accused person or his or her Australian legal practitioner requires access, and
- (d) be given to the responsible person at least 7 days before the evidence for the prosecution is given in the proceeding, unless the court gives leave for the notice to be given at a later time.

22 Recorded interview to be made available within 7 days

(1) A responsible person who receives a defence notice must give the accused person

and his or her Australian legal practitioner (if any) access to listen to or view the recorded interview within 7 days (or any shorter period of time that the court may direct) after the day on which the responsible person receives the defence notice.

- (2) The responsible person may give the accused person or his or her Australian legal practitioner access to listen to or view the recorded interview on more than one occasion.

Part 6 Evidentiary matters

23 Notice—evidence of substantial mental impairment

For the purposes of section 151 (1) of the Act, notice of an accused person's intention to adduce evidence of substantial mental impairment at his or her trial for murder:

- (a) must be in Form 1, and
- (b) must be given to the Director of Public Prosecutions at least 35 days before the date on which the trial is listed to commence.

24 Offences for which briefs of evidence not required

For the purposes of section 187 (5) of the Act, the following proceedings are prescribed as proceedings of a kind in which a prosecutor is not required to serve a brief of evidence:

- (a) proceedings for an offence for which a penalty notice may be issued (other than an offence that is set out in Schedule 4 and that is not referred to below),
- (b) proceedings for an offence under section 4 of the *Summary Offences Act 1988*,
- (c) proceedings for an offence under any of the following provisions of the *Road Transport Act 2013* (or a former corresponding provision within the meaning of that Act):
- (i) section 53 (3) or 54 (1) (a), (3) (a), (4) (a), (5) (a) (i) or (b) (i),
- (ii) section 110 or 112,
- (d) proceedings for a summary offence for which there is a monetary penalty only,
- (e) proceedings for an offence under section 10 of the *Drug Misuse and Trafficking Act 1985*,
- (f) proceedings for an offence under section 16 (1) of the *Poisons and Therapeutic Goods Act 1966*.

25 Short briefs of evidence required in certain circumstances

- (1) The object of this clause is to reduce the time spent by police officers in producing statements of non-material witnesses for inclusion in certain briefs of evidence and, accordingly, a court is to have regard to that object when exercising its functions

under this clause.

- (2) This clause applies only to proceedings for summary offences (including proceedings for indictable offences specified in Table 2 to Schedule 1 to the Act that are being dealt with summarily) for which a brief of evidence is required to be served under section 183 of the Act.
- (3) In this clause, **prescribed statement** means, in relation to a brief of evidence required to be served under section 183 of the Act in proceedings, a statement of a non-material witness, including the following:
 - (a) a police officer who provides evidence that the preconditions of the exercise of a power have been satisfied or establishes that the evidence on which the prosecutor relies was obtained in accordance with the law (for example, the custody manager who cautions the accused person under Part 9 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#)),
 - (b) a police officer who was responsible for the movement of, or recording the movement of, a thing connected with the offence or the investigation of the offence (for example, a police officer who conveys DNA or a drug sample to the Division of Analytical Laboratories),
 - (c) a police officer who operated a device that produced or caused the production of a document, photograph, video or any other thing relied on by the prosecutor to prove the prosecution's case,
 - (d) any other police officer who provides evidence that merely corroborates evidence of another police officer whose statement relates to a process or procedure and is included in the brief of evidence (for example, a police officer, other than the investigating police officer, who was present when the accused person was interviewed),
 - (e) a person who is a medical practitioner, nurse, paramedic or other health care professional if all the notes of the person (for example, doctor's treatment notes or ambulance officer's checklists) have been included in the brief of evidence.
- (4) For the purposes of section 183 (2) of the Act, a brief of evidence need not include the following:
 - (a) any prescribed statement, but only if the brief includes a list of each prescribed statement that, but for this clause, would need to be included in the brief and a summary of what each listed statement would include,
 - (b) any document that was served on the accused person or the accused person's legal representative by or on behalf of the prosecutor after the court attendance notice in relation to the offence concerned was served.

- (5) On application by the accused person in proceedings, the court may order that any prescribed statement, or any document referred to in subclause (4) (b), be served on the accused person by the prosecutor within a specified time before the hearing if the statement or document was not included in the brief of evidence. The court is to give reasons for the making of the order.
- (6) The court may make an order under subclause (5) only if satisfied that:
 - (a) in the case of a prescribed statement, the making of the order would assist the accused person to respond to the charge or assist the court in determining the matter, or
 - (b) in the case of a document referred to in subclause (4) (b), the application for the order has been made in good faith.

26 New trials of sexual assault proceedings—notice of intention to tender record of original evidence of complainant

For the purposes of section 306B (3) (a) or 306I (3) (a) of the Act, a notice given by the prosecutor to the accused person under either of those provisions must:

- (a) specify whether the record or records to be tendered by the prosecutor in the new trial proceedings are an audio visual recording, an audio recording or a transcript of the evidence given by the complainant in the original proceedings, and
- (b) if a record to be tendered is an audio visual recording or audio recording, contain information to the effect that the accused person and his or her Australian legal practitioner are entitled to listen to or view the recording at a place nominated by the prosecutor and set out the name of the person responsible for arranging access to the recording.

27 Access to record of original evidence of complainant

- (1) For the purposes of section 306F (4) of the Act, this clause sets out the procedure for obtaining access to listen to or view an audio visual recording or audio recording of the original evidence of a complainant.
- (2) On receipt of a notice under section 306B (3) (a) or 306I (3) (a) of the Act specifying the prosecutor's intention to tender in proceedings an audio visual recording or audio recording of the original evidence of the complainant, the accused person, or his or her Australian legal practitioner, may give the responsible person a notice in writing that he or she requires access to the recording.
- (3) A responsible person who receives a notice that complies with this clause must give the accused person and his or her Australian legal practitioner (if any) access to listen to or view the recording as soon as practicable after the day on which the responsible person receives the notice.

(4) The responsible person may give any person accompanying the accused person, or his or her Australian legal practitioner, who has been engaged to assist the accused person's case access to listen to or view the recording.

(5) In this clause:

responsible person means the person nominated under clause 26 (b) by the prosecutor as the person responsible for arranging access to the recording.

28 Compellability of family members

For the purposes of section 279 (5) (b) of the Act, Form 2 is the prescribed form in which a court's reasons are to be recorded.

29 Depositions by persons dangerously ill

For the purposes of section 284 (2) of the Act, Form 3 is the prescribed form in which a deposition must be taken.

30 Authorised classifiers

For the purposes of the definition of **authorised classifier** in section 289A of the Act, members of the NSW Police Force who have undertaken training in the classification of child abuse material that is conducted or arranged by the NSW Police Force are prescribed as authorised classifiers.

Part 7 Circle sentencing intervention program

Division 1 Preliminary

31 Program declared to be intervention program

For the purposes of section 347 (1) of the Act, the program of measures described in this Part for dealing with offenders is declared to be an intervention program for the purposes of Part 4 of Chapter 7 of the Act.

32 Definitions

In this Part:

Aboriginal Community Justice Group for a declared place means the Aboriginal Community Justice Group established for that place under Division 4.

Aboriginal person means a person who:

- (a) is a member of the Aboriginal race of Australia, and
- (b) identifies as an Aboriginal person, and
- (c) is accepted by the Aboriginal community as an Aboriginal person.

circle sentencing group for a referred offender means a circle sentencing group convened under Division 3 for the offender.

guidelines means guidelines issued by the Minister under clause 56.

offender means a person who has pleaded guilty to, or has been found guilty of, an offence before a participating court where that offence is an offence in respect of which an intervention program may be conducted as provided by section 348 of the Act.

participating court means the Local Court.

presiding Magistrate means the Magistrate presiding over the participating court that refers a referred offender.

program means the program of measures described in Division 3.

Program Officer for a declared place means an employee of the Department whose role involves administering the program for the place referred to in clause 55 (1).

program participation order means a grant of bail by, or other order of, a participating court made in respect of an offender for the purpose of allowing the offender to participate in the program.

referred offender means an offender who is the subject of:

- (a) a suitability assessment order, or
- (b) a program participation order.

suitability assessment order means a grant of bail by, or other order of, a participating court made in respect of an offender for the purpose of allowing an assessment of the offender's capacity and prospects for participation in the program to be made.

victim has the same meaning as **victim of crime** has for the purposes of the [Victims Rights and Support Act 2013](#).

33 Application

- (1) This Part applies only in respect of the Local Court sitting at a declared place.
- (2) For the purposes of this Part, a **declared place** means:
 - (a) Armidale, Bourke, Brewarrina, Dubbo, Kempsey, Lismore, Mount Druitt, Nambucca, Nowra and Walgett, and

Note—

The places referred to in paragraph (a) are places taken to be declared places under clause 30 (3) of the repealed [Criminal Procedure Regulation 2010](#).

- (b) any place declared by the Minister to be a place for the program.

- (3) Any declaration made, or taken to have been made, under this clause may be amended or revoked from time to time.

34 Summary of process for participation in program

- (1) The following is a summary of the process involved in referring an offender for participation in the program:

(a) **Suitability assessment order made**

A participating court makes a suitability assessment order in respect of the offender.

(b) **Program Officer convenes meeting of Aboriginal Community Justice Group**

The Program Officer for the declared place convenes a special meeting of the Aboriginal Community Justice Group for the declared place under Division 2 to assess whether the offender is a suitable candidate to participate in the program. (The Program Officer is to carry out the assessment if, after making all reasonable efforts to do so, the Program Officer cannot convene a meeting of the Group within a reasonable time.)

(c) **Aboriginal Community Justice Group assesses offender**

The Aboriginal Community Justice Group meets to assess the offender's suitability having regard to certain criteria. The Group may either assess the offender as being suitable or not suitable for participation. In either event, the Group must report its finding to the court that referred the offender. (If the Program Officer carries out the assessment, the Program Officer is to have regard to the same criteria in carrying out the assessment, and report the finding to the court.)

(d) **Court determines whether program participation order should be made**

If the Aboriginal Community Justice Group (or the Program Officer, if that is the case) assesses an offender as not being suitable for participation, the offender will not be eligible to participate in the program. However, if the Group (or the Program Officer) assesses the offender to be suitable, the participating court may then make a program participation order if it is satisfied that the offender is otherwise eligible to participate and that it would be appropriate for the offender to participate in the program.

(e) **Offender enters into agreement to participate**

The offender enters into an agreement to participate in the program.

(f) **Program Officer convenes a circle sentencing group**

The Program Officer will then convene a circle sentencing group constituted as

provided by Division 3 for the purpose of recommending an appropriate sentence and determining a treatment and rehabilitation plan for the offender. The presiding Magistrate will preside over the circle sentencing group.

(g) Offender must comply with program and any intervention plan

An offender must comply with the program participation order and any intervention plan determined by the circle sentencing group. A failure to do so may result in the offender being returned to the participating court for the court to deal with the offender.

(h) Court may pronounce a sentence

The court that referred the offender may, if it agrees with the consensus of the circle sentencing group on the issue, impose a sentence on the offender in the terms recommended by the group following the conclusion of the circle. The sentence will be pronounced in open court.

- (2) This clause does not affect the meaning or interpretation of any provision of this Part that it summarises.

Division 2 Assessment of suitability to participate

35 Notification of suitability assessment order

If a participating court sitting at a declared place makes a suitability assessment order in respect of a referred offender, it must notify the Program Officer for the declared place of the order.

36 Meeting of Aboriginal Community Justice Group

- (1) The Program Officer for the declared place must convene a meeting of the Aboriginal Community Justice Group for the declared place to assess the suitability of a referred offender to participate in the program as soon as practicable after being notified of a suitability assessment order in respect of the offender.
- (2) The meeting is to be attended by at least 3 members of the Group chosen by the Program Officer.

37 Role of Aboriginal Community Justice Group

- (1) In assessing the suitability of a referred offender to participate in the program, the Aboriginal Community Justice Group to which the offender has been referred is to have regard to the following matters:
 - (a) the nature of the offence committed by the offender,
 - (b) whether the offender is part of an Aboriginal community at the declared place or has a close association or kinship with that community,

- (c) the impact of the offence on its victims and the Aboriginal community to which the offender belongs or with which the offender has a close association or kinship,
 - (d) the potential benefits to the offender, the victims, the Aboriginal community and the community generally should the offender participate in the program,
 - (e) any other matter that it considers relevant.
- (2) The Aboriginal Community Justice Group to which an offender has been referred must report to the participating court that made the suitability assessment order in the form approved by the Minister within 14 days (or any further period that the court may allow) after the Group has been convened.

38 Program Officer to assess if unable to convene meeting within reasonable period

- (1) Despite clauses 36 and 37, if the Program Officer is not able to convene a meeting of the Aboriginal Community Justice Group for a declared place in accordance with clause 36:
- (a) after making all reasonable efforts in the circumstances to do so, and
 - (b) within a time that the Program Officer considers is a reasonable time after being notified of a suitability assessment order in respect of an offender (taking into account the time by which the finding must be reported under clause 37 (2)),
- the Program Officer instead is to assess the suitability of the offender to participate in the program.
- (2) In making an assessment under subclause (1), the Program Officer is to have regard to the matters set out in clause 37 (1) in relation to the offender.
- (3) The Program Officer is to report his or her finding on an assessment made under subclause (1) to the participating court that made the suitability assessment order within 21 days (or any further period that the court may allow) after being notified of the order.

Division 3 The circle sentencing intervention program

39 Objectives of the program

The objectives of the program are as follows:

- (a) to include members of Aboriginal communities in the sentencing process,
- (b) to increase the confidence of Aboriginal communities in the sentencing process,
- (c) to reduce barriers between Aboriginal communities and the courts,
- (d) to provide more appropriate sentencing options for Aboriginal offenders,

- (e) to provide effective support to victims of offences by Aboriginal offenders,
- (f) to provide for the greater participation of Aboriginal offenders and their victims in the sentencing process,
- (g) to increase the awareness of Aboriginal offenders of the consequences of their offences on their victims and the Aboriginal communities to which they belong,
- (h) to reduce recidivism in Aboriginal communities.

40 Eligibility to participate in program

- (1) A person is eligible to participate in the program only if:
 - (a) the person is an Aboriginal person, and
 - (b) the person is an offender, and
 - (c) the person has been assessed as suitable for participation in the program by the Aboriginal Community Justice Group for the declared place at a meeting convened in accordance with Division 2 (or by the Program Officer, under clause 38), and
 - (d) the person enters into an agreement to participate in the program, and
 - (e) the court considers that the facts, as found by the court, or as pleaded to by the person, in connection with the offence, together with the person's antecedents and any other information available to the court, indicate that it is likely that the person will be required to serve, or be subject to, a relevant sentence.
- (2) In this clause, **relevant sentence** means:
 - (a) any sentence of imprisonment, including a suspended sentence and a sentence the subject of an intensive correction order or home detention order under the *Crimes (Sentencing Procedure) Act 1999*, or
 - (b) a community service order, or
 - (c) an order providing for an offender to enter into a good behaviour bond.

41 Measures that constitute the circle sentencing program

The program is constituted by the following measures:

(a) Offender enters into agreement to participate in the program

A participating court refers an offender for participation in a circle sentencing intervention program by making a program participation order and the offender enters into an agreement to participate in the program.

(b) Constitution of circle sentencing group

The Program Officer for the declared place, in consultation with the presiding Magistrate, convenes a circle sentencing group for the referred offender.

(c) Circle sentencing group determines intervention plan for offender and recommends sentence

The circle sentencing group meets:

- (i) to determine an appropriate plan (if any) for the treatment or rehabilitation of the referred offender, and
- (ii) to recommend an appropriate sentence for the offender.

(d) Offender to comply with intervention plan

The offender complies with the requirements of an intervention plan (if any) determined by the circle sentencing group.

Note—

Section 346 (1) of the Act defines *intervention plan* to mean a plan, agreement or arrangement arising out of the participation of an offender or an accused person in an intervention program.

42 Convening of circle sentencing group

- (1) A participating court that makes a program participation order in respect of a referred offender must notify the Program Officer for the declared place of the order.
- (2) The Program Officer must convene a circle sentencing group for the referred offender as soon as practicable after being notified of the making of a program participation order in respect of the offender.
- (3) A circle sentencing group must be convened at a location approved by the presiding Magistrate.

43 Constitution of circle sentencing group

- (1) A circle sentencing group for a referred offender must include the following persons:
 - (a) the presiding Magistrate,
 - (b) the offender,
 - (c) the offender's legal representatives (unless the offender directs otherwise),
 - (d) the prosecutor,
 - (e) the Program Officer,
 - (f) at least 3 Aboriginal persons (but no more than the maximum number of persons specified in the guidelines) chosen by the Program Officer, being persons who the

Program Officer is satisfied belong to the Aboriginal community of which the offender claims to be part or with which the offender claims to have a close association or kinship.

- (2) A circle sentencing group convened by a Program Officer may (but need not) include the following persons:
 - (a) any victim of the offender's offence who consents to participate in the group,
 - (b) a support person for the victim chosen by the victim,
 - (c) a support person for the offender chosen by the offender,
 - (d) any other person or persons chosen by the Program Officer, but only with the consent of the offender and, if a victim is participating, the consent of the victim.
- (3) A member of a circle sentencing group may object to the participation in the group of a person chosen by the Program Officer for the purposes of subclause (1) (f) or (2) (d). The presiding Magistrate is to determine the objection.
- (4) The presiding Magistrate may invite any other person of a class specified by the guidelines to attend a circle sentencing group.
- (5) The guidelines may specify whether that person may or may not participate in the circle sentencing group.

44 Functions of circle sentencing groups

- (1) The functions of a circle sentencing group are as follows:
 - (a) to determine an appropriate plan for the treatment or rehabilitation of a referred offender,
 - (b) to recommend an appropriate sentence for the offender,
 - (c) to provide support or other assistance to the offender in completing the program or an intervention plan arising out of the program,
 - (d) any other functions that may be imposed or conferred on the group by this Division or the guidelines.
- (2) Without limiting subclause (1) (a), a circle sentencing group may require a referred offender to comply with a plan that includes requirements relating to any one or more of the following:
 - (a) the conduct and good behaviour of the offender,
 - (b) attendance for counselling or other treatment,
 - (c) the supervision of the offender for the duration of the plan,

- (d) residence, association with other persons or attendance at specified locations,
- (e) involvement in activities, courses, training or employment for the purpose of promoting the reintegration of the offender into the community,
- (f) any other matters that the group considers would promote the treatment or rehabilitation of the offender.

45 Exclusions of persons from circle sentencing groups

- (1) The presiding Magistrate may exclude a person (other than the offender or a victim) from participation in a circle sentencing group if the Magistrate is satisfied that:
 - (a) the person has a conflict of interest that would prevent the person from impartially discharging his or her obligations as a member of the group, or
 - (b) the behaviour of the person is disrupting the orderly conduct of a meeting of the group.
- (2) The Magistrate may, with the agreement of the other members of the group, invite another person to replace a person who has been excluded from participating in the group under subclause (1). However, if the other members do not agree, the Program Officer is to convene a new circle sentencing group for the offender excluding that other person.
- (3) A person who is not a member of the circle sentencing group may not attend a meeting of the group unless all of the following persons consent:
 - (a) the presiding Magistrate,
 - (b) the offender,
 - (c) the victim, if a victim is participating in the group.

46 Termination of circle sentencing group meeting

- (1) The presiding Magistrate may terminate a meeting of a circle sentencing group if the Magistrate is satisfied that the behaviour of a member of the group is disrupting the orderly conduct of the meeting.
- (2) If a meeting is terminated, the Magistrate may direct the Program Officer to convene a new circle sentencing group or the Magistrate may return the matter to the participating court.

47 Victims to be heard

If a victim agrees to participate in a circle sentencing group, the victim must be given an opportunity to express his or her views about the offender and the nature of the offence committed against the victim.

48 Procedure generally

- (1) The procedure for the calling of meetings of a circle sentencing group and the conduct of business at those meetings is, subject to this Division and the guidelines, to be as determined by the group.
- (2) The presiding Magistrate is to preside at a meeting of a circle sentencing group.
- (3) The quorum for a meeting of a circle sentencing group is all of the members of the group (other than members excluded under clause 45).

Note—

A circle sentencing group is to be constituted in accordance with clause 43 (subject to clause 50).

- (4) A decision supported by a majority of the members in a meeting of the circle sentencing group is to be treated as a decision of the whole group.

49 Records of meetings

- (1) The presiding Magistrate must make a record (or cause a record to be made) of the following matters in connection with a circle sentencing group:
 - (a) the name, address and date of birth of the referred offender,
 - (b) the nature of the offence,
 - (c) the name of the Program Officer,
 - (d) the names of the other members of the group and the capacity in which they participated,
 - (e) the dates on, and the locations at, which the circle sentencing group met,
 - (f) particulars of any intervention plan determined, or sentence recommended, by the group,
 - (g) the major points of discussion of the group,
 - (h) any other matter that the Magistrate considers relevant.
- (2) A copy of a record made under subclause (1) must be kept in the participating court's file for the proceedings in respect of which a referred offender was referred.

50 Reconvening of the circle sentencing group

- (1) The Program Officer may, in consultation with the presiding Magistrate, reconvene a circle sentencing group after it has determined an intervention plan or recommended an appropriate sentence (or both) for a referred offender for the purpose of reconsidering any matter it had previously determined or recommended.

- (2) The members of the reconvened group should, so far as is reasonably possible, be the same members who participated in the original circle sentencing group.
- (3) A circle sentencing group cannot be reconvened if:
 - (a) the period of 12 months has elapsed since the matter to be reconsidered was originally determined or recommended by the group, or
 - (b) the court that referred the referred offender to the group has imposed a sentence on the offender for the offence (whether or not in the terms recommended by the group).

Division 4 Aboriginal Community Justice Groups

51 Minister to establish Group for each declared place

The Minister is to establish an Aboriginal Community Justice Group for each declared place.

52 Appointment of members of Groups

- (1) The Minister may appoint those Aboriginal persons that the Minister considers necessary to be members of an Aboriginal Community Justice Group established under this Part.
- (2) The Minister may make an appointment under subclause (1) only on the recommendation of the Program Officer for the declared place concerned.
- (3) A person appointed as a member under subclause (1) is appointed for a period of 3 years, unless before the expiry of that period:
 - (a) the person resigns his or her appointment, or
 - (b) the person's appointment is revoked by the Minister.
- (4) A person appointed as a member under subclause (1) may resign his or her appointment by written notice to the Minister.
- (5) The Minister may revoke the appointment of a person as a member of an Aboriginal Community Justice Group at any time by written notice to the person.
- (6) Nothing in this clause prevents the Minister from re-appointing a person as a member of an Aboriginal Community Justice Group under subclause (1) following the expiry of a previous period of appointment or the revocation of a previous appointment.

53 Functions of Groups

The functions of an Aboriginal Community Justice Group include (but are not limited to) the following functions:

- (a) assessing the suitability of a referred offender to participate in the program and reporting to the participating court that referred the offender about the offender's suitability,
- (b) any other functions that may be imposed or conferred on the Group by this Part or the guidelines.

54 Procedure

- (1) The procedure for the calling of meetings of an Aboriginal Community Justice Group and the conduct of business at those meetings is, subject to this Part and the guidelines, to be as determined by the Group.
- (2) The quorum for a meeting of an Aboriginal Community Justice Group is 3 members of the Group.
- (3) A decision supported by a majority of the members in attendance at a meeting of an Aboriginal Community Justice Group is to be treated as a decision of the whole Group.

Division 5 Miscellaneous

55 Program Officer

- (1) The Minister is to ensure that there is a Program Officer for each declared place.
- (2) The functions of a Program Officer include (but are not limited to) the following functions:
 - (a) contacting victims of a referred offender for the purpose of ascertaining whether they wish to participate in a circle sentencing group for the offender,
 - (b) informing the offender of:
 - (i) the processes involved in the program or in being assessed for participation in the program, and
 - (ii) the offender's obligations under the program or an intervention plan arising out of the program,
 - (c) convening meetings of Aboriginal Community Justice Groups and circle sentencing groups,
 - (d) any other functions that may be imposed or conferred on the Program Officer by this Part or the guidelines.

56 Minister may issue guidelines

- (1) The Minister may from time to time issue guidelines, not inconsistent with this Part, for or with respect to any or all of the following matters:

- (a) the constitution and procedure for meetings of Aboriginal Community Justice Groups and circle sentencing groups,
 - (b) the functions of those Aboriginal Community Justice Groups and circle sentencing groups and of members of those groups in connection with the program or assessment for participation in the program,
 - (c) any other matter in respect of which guidelines are permitted or required by this Part.
- (2) Without limiting subclause (1), the guidelines may include provisions that:
- (a) apply generally, or
 - (b) apply only in relation to specified persons, courts, groups or other bodies, or
 - (c) apply only in specified circumstances, or
 - (d) do a combination of the things referred to in paragraphs (a), (b) and (c).

57 Evidence of statements generally inadmissible

- (1) Evidence of anything said, or any admission made or document produced, in:
- (a) a meeting of a circle sentencing group concerning a referred offender, or
 - (b) a meeting of an Aboriginal Community Justice Group held to assess a referred offender's suitability to participate in the program,
- is not admissible in any criminal or civil proceedings.
- (2) Subclause (1) does not apply to the criminal proceedings in respect of which a referred offender was referred or any appeal made in respect of those proceedings.

58 Prohibition on disclosure of information

- (1) A relevant program participant must not disclose any information obtained in connection with:
- (a) the assessment of a referred offender's suitability to participate in the program, or
 - (b) the conduct of the program or an intervention plan arising out of the program.

Maximum penalty: 20 penalty units.

- (2) Nothing in subclause (1) prevents a relevant program participant from disclosing information:
- (a) in connection with the conduct of an assessment of a referred offender's suitability to participate in the program, or

- (b) to a victim of a referred offender about the outcome of a circle sentencing group for the offender, or
- (c) for the purposes of any legal proceedings, or
- (d) in accordance with a requirement of the *Ombudsman Act 1974* or with any request made by the Ombudsman, or
- (e) with other lawful excuse.

(3) In this clause:

relevant program participant means:

- (a) a member of an Aboriginal Community Justice Group, or
- (b) a person selected to participate in a circle sentencing group for a referred offender under clause 43 (1) (f) or (2) (b), (c) or (d).

Part 8

59-95 (Repealed)

Part 9 Traffic offender intervention program

Division 1 Preliminary

96 Program declared to be intervention program

- (1) For the purposes of section 347 (1) of the Act, the program of measures described in this Part for dealing with offenders is declared to be an intervention program for the purposes of Part 4 of Chapter 7 of the Act.
- (2) Nothing in this Part prevents an offender from undertaking an approved traffic course otherwise than pursuant to a program participation order.

97 Definitions

(1) In this Part:

approved traffic course means a course of study or training conducted by a government agency or an association that is approved under Division 4.

approved traffic course provider means the person, association or body that conducts an approved traffic course.

association means:

- (a) an association registered under the *Associations Incorporation Act 2009*, or
- (b) an Aboriginal and Torres Strait Islander corporation within the meaning of the

Corporations (Aboriginal and Torres Strait Islander) Act 2006 of the Commonwealth.

government agency means any person, department or body exercising executive or administrative functions on behalf of the Government.

guidelines means guidelines issued by the Secretary under Division 5.

program means the program of measures described in Division 3.

program participation order means a grant of bail by, or other order of, the Local Court made in respect of a traffic offender for the purpose of allowing the offender to participate in the program by undertaking or completing an approved traffic course specified by the Court.

Note—

An offender may be referred for participation in the traffic offender intervention program at the following points in criminal proceedings:

- (a) a court that grants bail to a person may impose a bail condition requiring the person to participate in the program,
- (b) a court may defer the sentencing of an offender for the purpose of allowing the offender to participate in the program by an order under section 11 of the *Crimes (Sentencing Procedure) Act 1999*.

referral means the referral of a traffic offender under a program participation order for participation in the program by undertaking or completing an approved traffic course.

referred traffic offender means a traffic offender who is the subject of a program participation order.

traffic offence means:

- (a) an offence under the road transport legislation (within the meaning of the *Road Transport Act 2013*), or
- (b) an offence under the former road transport legislation (within the meaning of Part 2 of Schedule 4 to the *Road Transport Act 2013*).

traffic offender means a person who has pleaded guilty to, or has been found guilty of, a traffic offence before the Local Court where that offence is an offence in respect of which an intervention program may be conducted as provided by section 348 of the Act.

victim has the same meaning as **victim of crime** has for the purposes of the *Victims Rights and Support Act 2013*.

- (2) A reference in this Part to a **program participation order specifying an approved traffic course** includes a reference to the order specifying a list of approved traffic

courses (one of which the offender must nominate for the purposes of the order).

98 Summary of process for participation in program

(1) The following is a summary of the process involved in referring a traffic offender for participation in the program:

(a) **Court determines whether an offender may be referred for participation**

The Local Court determines whether a traffic offender may be referred to the program having regard to the matters specified in Division 2.

(b) **Court makes a program participation order**

The Local Court may make a program participation order if it is satisfied that a traffic offender is eligible to participate in the program. The order will specify the approved traffic course that the offender is to undertake or complete.

(c) **Traffic offender enters into an agreement to participate**

The traffic offender enters into an agreement to participate in the program as a condition of bail or deferral of sentence.

(d) **Traffic offender to comply with requirements of approved traffic course**

The traffic offender complies with the requirements of the approved traffic course. A failure to do so may result in the offender being returned to the Local Court for the Court to deal with the offender.

(2) This clause does not affect the meaning or interpretation of any provision of this Part that it summarises.

Division 2 Determining eligibility to participate in program

99 Eligibility to participate in program

(1) A person is eligible to be referred by the Local Court to participate in the program only if:

(a) the person is a traffic offender, and

(b) the person has not been sentenced for the traffic offence, and

(c) a suitable approved traffic course is available for the person to attend or will become available within what the Court considers is a reasonable time, and

(d) the person enters into an agreement to participate in the program, and

(e) the Court considers that, having regard to the matters referred to in subclause (2), the person is suitable for participation in the program.

- (2) The Local Court is to have regard to the following matters in determining whether a traffic offender is suitable for participation in the program:
- (a) the extent to which the offender's character, antecedents, age, health and mental condition would be likely to prevent the offender's participation in the program or disrupt the conduct of the program,
 - (b) the nature of the offence committed by the offender,
 - (c) any extenuating circumstances in which the traffic offence was committed,
 - (d) the impact of the offence on the community and the victim of the offence (if any),
 - (e) the offender's history of convictions for traffic offences (if any),
 - (f) the offender's previous participation in an approved traffic course (if any),
 - (g) any other matters that the Court considers relevant.
- (3) When considering a traffic offender's history for the purposes of subclause (2), the Local Court is to consider the following:
- (a) whether this is the traffic offender's first offence,
 - (b) if it is not the traffic offender's first offence, the nature and seriousness of any previous offence or offences.

Division 3 The traffic offender intervention program

100 Objective of the program

The objective of the program is to provide a community based road safety educational program for referred traffic offenders:

- (a) to provide the offenders with the information and skills necessary to develop positive attitudes to driving and to change driving behaviour, and
- (b) to develop safer driving behaviour in the offenders.

101 Measures that constitute the program

The program is constituted by the following measures:

(a) **Court refers traffic offender to approved traffic course**

The Local Court refers an offender for participation in the program by making a program participation order that specifies the approved traffic course that the offender is to undertake or complete and the offender enters into an agreement to participate in the program. (An order may also relate to completion of an approved traffic course if an offender has already commenced the course on the offender's own initiative or

that of the offender's legal representative.)

(b) Referred traffic offender to participate in course

The referred traffic offender complies with the requirements of the approved traffic course that the Local Court has required the offender to undertake or complete.

(c) Approved traffic course provider reports to Local Court on compliance

The approved traffic course provider makes a written report to the Local Court as to the referred traffic offender's compliance with the requirements of the approved traffic course before the Court finalises the matter.

102 Reports to Local Court on compliance

The approved traffic course provider that conducts the approved traffic course to which a referred traffic offender has been referred must report to the Local Court on the extent to which the offender has complied with the requirements of the course:

- (a) in the form approved by the Secretary, and
- (b) no later than the date fixed by the Court for the offender to re-appear before the Court to finalise the matter.

103 Approved traffic course provider to make records

An approved traffic course provider must make a record (or cause a record to be made) of the matters in connection with the participation of offenders in the course that are specified by the guidelines.

Division 4 Approved traffic courses

104 Secretary may approve courses for program

- (1) The Secretary may, by order published in the Gazette, approve a course of study or training as an approved traffic course for the purposes of the program.
- (2) The Secretary may approve a course of study or training under subclause (1) only if:
 - (a) the course is to be conducted by a government agency or by an association, and
 - (b) any other prerequisites for approval that are specified by the guidelines have been met.
- (3) A course of study or training approved under subclause (1) may be approved for all places at which sittings of the Local Court are held or only for the places that are specified in the order approving the course.
- (4) The Secretary may at any time and for any reason revoke an approval for a course of study or training under subclause (1) by order published in the Gazette.

- (5) An approval for a course of study or training under subclause (1) has effect for a period of 3 years, unless sooner revoked.
- (6) Nothing in subclause (5) prevents the Secretary from re-approving a course of study or training under subclause (1) after a previous approval for the study or training has ceased to have effect.

105 Approved traffic course to comply with guidelines

An approved traffic course provider that conducts an approved traffic course is to ensure that:

- (a) the course complies with any content requirements specified in the guidelines that are relevant to the course, and
- (b) the course is otherwise conducted in accordance with any guidelines that are relevant to the course.

Division 5 Miscellaneous

106 Secretary may issue guidelines

- (1) The Secretary may issue guidelines, not inconsistent with this Part, from time to time with respect to any or all of the following matters:
 - (a) the keeping of records in respect of participation in the program or approved traffic courses undertaken or completed as part of the program,
 - (b) the monitoring of participation of referred traffic offenders in the program and in approved traffic courses undertaken or completed as part of the program,
 - (c) the functions and responsibilities of approved traffic course providers in connection with the program,
 - (d) the content and conduct of approved traffic courses,
 - (e) the process of identifying the availability of a suitable approved traffic course,
 - (f) the undertaking of an approved traffic course otherwise than pursuant to a program participation order,
 - (g) the administration of the program,
 - (h) any other matter in respect of which guidelines are permitted or required by this Part.
- (2) Without limiting subclause (1), the guidelines may include provisions that:
 - (a) apply generally, or

- (b) apply only in relation to specified persons, courts, groups or other bodies, or
- (c) apply only in specified circumstances, or
- (d) do a combination of the things referred to in paragraphs (a), (b) and (c).

(3) Guidelines must be published on the Department's website.

107 Evidence of statements generally inadmissible

- (1) Evidence of anything said, or any admission made, by a referred traffic offender in the course of participating in an approved traffic course is not admissible in any criminal or civil proceedings.
- (2) Subclause (1) does not apply to the criminal proceedings in respect of which a referred traffic offender was referred.

108 Prohibition on disclosure of information

- (1) An approved traffic course provider that conducts an approved traffic course that is undertaken or completed by a referred traffic offender as part of the program (or any person involved in conducting the course for or on behalf of the provider) must not disclose the name of, or any other identifying information about, the offender that is obtained in connection with the conduct of the program or course.

Maximum penalty: 20 penalty units.

- (2) Nothing in subclause (1) prevents an approved traffic course provider or person from disclosing information of the kind referred to in that subclause:
 - (a) in connection with the conduct of the program or an approved traffic course that is undertaken or completed as part of the program, or
 - (b) for the purposes of any legal proceedings, or
 - (c) in accordance with a requirement of the *Ombudsman Act 1974* or with any request made by the Ombudsman, or
 - (d) with other lawful excuse.

Part 10 Child sexual offence evidence pilot scheme

108A Extension of pilot scheme

For the purposes of clause 81 of Schedule 2 to the Act, 30 June 2022 is prescribed as the date until which Part 29 of Schedule 2 to the Act operates.

109 Qualifications for inclusion on panel of suitable children's champions

For the purposes of clause 89 (2) of Schedule 2 to the Act, the following are prescribed as

the qualifications, training, experience or skills that a person must have to be included on a panel:

- (a) successful completion of the witness intermediary training course provided by the Department, and
- (b) a tertiary qualification in psychology, social work, speech pathology, teaching or occupational therapy.

110 Suspension or revocation of inclusion of children’s champions on panel

Victims Services in the Department (or, if the Attorney General has nominated another agency under clause 89 (1) of Schedule 2 to the Act, that agency) may:

- (a) suspend or revoke the inclusion of a person on a panel under clause 89 of Schedule 2 to the Act, or
- (b) make the inclusion subject to conditions, or
- (c) vary or revoke any condition of inclusion or impose additional conditions on inclusion.

111 Form of oath or affirmation taken or made by children’s champions

The following are prescribed as the form of oath to be taken, or affirmation to be made, respectively, by a children’s champion for the purposes of clause 90 (4) of Schedule 2 to the Act:

- (a) I swear that I will well and faithfully communicate questions and answers and make true explanation of all matters and things as may be required of me according to the best of my skill and understanding,
- (b) I solemnly and sincerely declare and affirm that I will well and faithfully communicate questions and answers and make true explanation of all matters and things as may be required of me according to the best of my skill and understanding.

Note—

A person must either take an oath, or make an affirmation, before acting as a children’s champion in proceedings to which Part 29 of Schedule 2 to the Act applies.

112 Fees

The following fees are payable to a children’s champion (not including the amount of any Goods and Services Tax payable in respect of the relevant work or report):

- (a) \$144 for each hour of work done,
- (b) \$550 for each report provided.

Part 11 Miscellaneous

113 Public officers

- (1) For the purposes of paragraph (f) of the definition of **public officer** in section 3 (1) of the Act, the following bodies are declared to be public bodies:
 - (a) the Independent Commission Against Corruption,
 - (b) the Royal Society for the Prevention of Cruelty to Animals, New South Wales,
 - (c) the Animal Welfare League NSW,
 - (d) the Australian Federal Police,
 - (e) the Australian Securities and Investments Commission,
 - (f) the Australian Health Practitioner Regulation Agency,
 - (g) the Office of the Commonwealth Director of Public Prosecutions,
 - (h) the Law Enforcement Conduct Commission.
- (2) For the purposes of the definitions of **public officer** in sections 218 (2) and 257E (2) of the Act, an officer or employee of any of the following bodies is prescribed as a person who is not a public officer:
 - (a) the Royal Society for the Prevention of Cruelty to Animals, New South Wales,
 - (b) the Animal Welfare League NSW,
 - (c) the Australian Federal Police,
 - (d) the Australian Securities and Investments Commission,
 - (e) the Office of the Commonwealth Director of Public Prosecutions.

114 Certificate by Attorney General or Director of Public Prosecutions that no further proceedings to be taken

For the purposes of section 44 (1) of the Act, Form 4 is the prescribed form of certificate.

115 Offences not within jurisdiction of District Court

For the purposes of section 46 (2) of the Act, the offences referred to in sections 12 and 19A of the *Crimes Act 1900* are prescribed as being offences that are not within the jurisdiction of the District Court.

116 Issue of subpoenas in AVO proceedings

For the purposes of section 220 of the Act, proceedings for or relating to an apprehended

violence order commenced under the *Crimes (Domestic and Personal Violence) Act 2007* are prescribed as proceedings to which Part 3 of Chapter 4 of the Act applies.

117 Election not to have indictable offence dealt with summarily

- (1) For the purposes of section 265 (1) (b) of the Act, Form 5 is the prescribed form of words for the statement about a person's right to make an election and the consequences of not making an election.
- (2) For the purposes of section 266 (2) (a) of the Act, an election may be made orally to the Local Court or by filing a written notice with the Court.
- (3) For the purposes of section 266 (2) (b) of the Act, the withdrawal of an election may be made orally to the Local Court or by filing a written notice with the Court.

118 Delegation of functions

- (1) The registrar of a court may delegate to any person the exercise of any of the functions conferred on the registrar by this Regulation, other than this power of delegation.
- (2) The Sheriff may delegate to any person the exercise of any of the functions conferred on the Sheriff by this Regulation, other than this power of delegation.
- (3) The Secretary may delegate to any person the exercise of any of the functions conferred on the Secretary by clauses 104 and 106.

119 Savings

- (1) Any act, matter or thing that, immediately before the repeal of the *Criminal Procedure Regulation 2010*, had effect under that Regulation continues to have effect under this Regulation.
- (2) Any guidelines issued by the Minister under Division 5 of Part 8 of that Regulation and in force immediately before the commencement of this Regulation are taken to be issued by the Secretary under Division 5 of Part 9 of this Regulation.

119A Transitional provision relating to committal proceedings procedures

The Act, as in force before its amendment by the *Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017*, continues to apply to committal proceedings that deal with one or more offences if proceedings for any of those offences commenced before the amendments made to Part 3 of the Act by that amending Act commenced.

Schedule 1 Forms

(Clause 3 (2))

Form 1A

Charge certificate

(*Criminal Procedure Act 1986*; section 66 (1))

Case name:

Case number:

Prosecutor's reference number:

Part 1 Offences

The following offences are to proceed as set out below (court attendance notices for each offence are attached):

Offences

Reference number	Offence details (legislation reference/ common law)	Law part code	Description (sufficient for indictment or averment) and date of offence	How offence will proceed (indicate if for committal/back up or related offence/withdrawn/ summary offence)
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Part 2 Declarations by prosecutor

This is to certify that:

(a) the evidence available is capable of establishing each element of the offences that are to be the subject of the proceedings against the accused person, and

(b) [if the offence is not an offence under the law of the Commonwealth] a certificate under section 15A of the *Director of Public Prosecutions Act 1986* relating to the offence has been received and considered.

Signature:

Title of prosecutor:

Location of office of prosecutor:

Date:

Form 1B

Case conference certificate

(*Criminal Procedure Act 1986*; section 75))

Case name:

Case number:

Prosecutor's reference number:

Title of prosecutor attending:

Defence reference number:

Name, title and firm/organisation of accused person's legal representative:

Name and date of birth of accused person:

Date/s of case conference/s:

Part 1 Offences shown in charge certificate

The following offences are as shown in the charge certificate (court attendance notices for each offence are attached):

Charge certificate offences

Reference number	Offence details (legislation reference/ common law)	Law part code	Description (sufficient for indictment or averment) and date of offence	How offence will proceed (indicate if for committal/back up or related offence/withdrawn/ summary offence)
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Part 2 Offers by accused person and prosecutor

The following offers have been made to or by the accused person and the prosecutor (and are listed in chronological order of the making of the offers):

Offers made by accused person or prosecutor

Offer made by	Details of offer	Acceptance/Rejection	Date of acceptance/rejection
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Part 3 Offences

The offences that are being proceeded with are set out below (court attendance notices for each offence are attached), as well as the offences that have been withdrawn:

Offences

Reference number	Offence details (legislation reference/ common law)	Law part code	Description (sufficient for indictment or averment) and date of offence	How offence will proceed (indicate if for committal/back up or related offence/ withdrawn/summary offence)	Type of committal (trial or sentence)
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Part 4 Agreed facts for offences**Where guilty plea accepted**

The facts on the basis of which the accused person is pleading guilty are agreed and attached/The agreed facts on the basis of which the accused person is pleading guilty are attached with the disputed facts identified. [*delete the statement that is not applicable*]

Part 5 Declaration by prosecutor

[*Not to be completed for offences against a law of the Commonwealth or other offences to which the sentencing discount under Division 1A of Part 3 of the [Crimes \(Sentencing Procedure\) Act 1999](#) does not apply*]

I, [*insert title*], have not notified the accused person that it is intended to make a submission to the sentencing court that the discount for a guilty plea should not apply or should be reduced in relation to the following offence or offences:

[*delete if not applicable*]

I, [*insert title*], have notified the accused person that it is intended to make a submission to the sentencing court that the discount for a guilty plea should not apply or should be reduced in relation to the following offence or offences:

[*delete if not applicable*]

Signature:

Date and place:

Part 6 Declaration by legal representative of accused person

[Not to be completed for offences against a law of the Commonwealth or other offences to which the sentencing discount under Division 1A of Part 3 of the *Crimes (Sentencing Procedure) Act 1999* does not apply]

I, [insert name], the legal representative of the accused person, have explained to the accused person the matters specified in section 72 (2) of the *Criminal Procedure Act 1986*, that is, the following:

The effect of the scheme for the sentencing discount applied under Part 3 of the *Crimes (Sentencing Procedure) Act 1999* for a plea of guilty to an offence.

The penalties that apply to the offences that are proceeding and for any extra offences about which the accused person made offers or the prosecutor made offers for guilty pleas.

The effect on the penalty for an offence if the accused person pleads guilty to the offence at different stages of proceedings for the offence.

Signature:

Date and place:

Part 7 Declaration by accused person

[Only to be completed if the accused person does not intend to plead guilty to an offence, the case is to be committed for trial and the matter involves offences to which the sentencing discount under Division 1A of Part 3 of the *Crimes (Sentencing Procedure) Act 1999* applies]

I intend to plead not guilty to some/all of the offences that I have been charged with. I understand that my case will be sent to the District Court/Supreme Court [specify correct court] for trial for those offences.

My legal representative has explained to me the matters specified in section 72 (2) of the *Criminal Procedure Act 1986*, that is, the following:

The effect of the scheme for the sentencing discount applied under Part 3 of the *Crimes (Sentencing Procedure) Act 1999* for a plea of guilty to an offence.

The penalties that apply to the offences that are proceeding and for any extra offences about which I made offers or the prosecutor made offers for guilty pleas.

The effect on the penalty for an offence if I plead guilty to the offence at different stages of proceedings for the offence.

I understand and acknowledge the effect of the matters set out above in my case.

Signature:

Date and place:

Part 8 Obligations relating to confidentiality

The matters specified in this certificate must be treated as confidential (see section 79 of the *Criminal Procedure Act 1986*).

It is an offence to publish, or permit another person to publish, this certificate or evidence of anything said during a case conference or during subsequent negotiations relating to plea offers (see section 80 of the *Criminal Procedure Act 1986*). This certificate and evidence of those things cannot be used in court proceedings, other than relevant sentencing or appeal proceedings or disciplinary proceedings against a lawyer (see section 78 of the *Criminal Procedure Act 1986*).

Part 9 Signatures of prosecutor and legal representative of accused

This case conference certificate was signed by the prosecutor and the legal representative of the accused.

Prosecutor

Signature:

Title of prosecutor:

Location of office of prosecutor:

Date and place:

Legal representative of accused person

Signature:

Name of legal representative:

Date and place:

Form 1

(Clause 23)

Notice of intention to adduce evidence of substantial mental impairment

(*Criminal Procedure Act 1986*: section 151 (1))

R v [*insert name of defendant*]

To the Director of Public Prosecutions:

The defendant [*insert name of defendant*] has been committed for trial on a charge of murder. The trial is listed for hearing on [*insert date*] at [*insert name of court*].

In accordance with section 151 of the *Criminal Procedure Act 1986*, notice is given to the Director of Public Prosecutions that the defendant intends to adduce evidence tending to prove a contention by the defendant that the defendant is not liable to be convicted of murder by virtue of section 23A of the *Crimes Act 1900*.

The defendant intends to rely on the evidence of the following persons in support of that contention [*insert the name, occupation and address of each person to be called by the defendant, and include (in relation to each person) a short statement of the particulars of the evidence that the person proposes to give*].

Note—

If more space is needed, attach material to this form.

[*insert signature of defendant or defendant's legal practitioner*]

Defendant/defendant's legal practitioner

Date:

Form 2

(Clause 28)

Reasons for excusing a family member from giving evidence for the prosecution in a domestic violence or child assault case

(*Criminal Procedure Act 1986*: section 279 (5) (b))

On this date, I, the undersigned, a Judge of the Supreme Court/Judge of the District Court/Magistrate, sitting at [*insert location*] in the State of New South Wales, dealt with an application under section 279 of the *Criminal Procedure Act 1986*, that [*insert name of person to be excused*] be excused from giving evidence for the prosecution in proceedings against [*insert name of person charged*] charged with the following offence [*insert offence*].

I am satisfied, for the reasons stated below, that the application to be excused was made freely and independently of threat or any other improper influence by any person and that:

- (a) it is relatively unimportant to the case to establish the facts in relation to which it appears that a member of the accused person's family is to be asked to give evidence or there is other evidence available to establish those facts, and
- (b) the offence with which the accused person is charged is of a minor nature.

Reasons:

[insert signature of Judge or Magistrate]
Judge/Magistrate

Date:

Form 3

(Clause 29)

Form of deposition

(*Criminal Procedure Act 1986*: section 284 (2))

The deposition of [insert name of person], a person now dangerously ill, taken before the undersigned *Judge/Justice [insert location]. [insert name of person], being duly sworn, states as follows:

Note—

The witness's statement is to be in the first person, and should be reasonably full as to all material facts. The statement should be signed by the witness.

And I hereby certify that I have taken this deposition under section 284 of the *Criminal Procedure Act 1986* because it has been made to appear to me that the deponent is dangerously ill and that his or her evidence, if not immediately taken, will probably be lost.

[insert signature of Judge or Justice]
*Judge/Justice

Date:

Note—

If the deposition is by affirmation or declaration, the form is to be varied accordingly.

* Delete whichever is inapplicable.

Form 4

(Clause 114)

Certificate of Attorney General or Director of Public Prosecutions

(*Criminal Procedure Act 1986*: section 44 (1))

This is to certify that no further proceedings are to be taken with respect to [insert name of person], a person who is in custody on remand in the correctional centre at [insert name of correctional centre], under the order of [insert name of Judge], a Judge of the Supreme Court, or [insert name of Justice], Justice, on the following charge:

To their Honours the Judges of the Supreme Court.

}

[insert signature of Attorney General or Director of Public Prosecutions]
Attorney General/Director of Public Prosecutions

Date:

Form 5

Important information about your rights

(*Criminal Procedure Act 1986*: section 265 (1) (b))

To [insert name of person charged] charged with the offence of [insert offence] before the [insert name of court].

You have a right to make an election

The offence with which you have been charged is an indictable offence. That means that you may be dealt with by a jury in a higher court known as the District Court.

If you want to be dealt with by a jury you must elect to have the offence dealt with that way. You can make an election by telling the Magistrate you want to be dealt with by a jury.

If you do not elect to be dealt with by a jury, you will be dealt with summarily. That means you will be dealt with by a Magistrate of the Local Court.

To help you make your decision, you will shortly be provided with a copy of the brief of evidence against you and with your criminal history.

You have to make your decision within [insert number of days] days of being served with a copy of the brief of evidence.

You may wish to seek legal advice before you make an election.

Regardless of what you do, the prosecutor can elect to have the offence dealt with on indictment.

If you are dealt with by a jury

This will be in the District Court.

The jury (which is a group of people selected from the community) will hear evidence and decide if you are guilty or not guilty.

If the jury decides that you are guilty, the Judge will decide your penalty. The maximum penalty/term that the Judge can impose is [insert maximum penalty or term]

If you are dealt with by a Magistrate

This will be in the Local Court.

The Magistrate will hear evidence and decide if you are guilty or not guilty.

If the Magistrate decides that you are guilty, the Magistrate will decide your penalty. The maximum penalty/term that the Magistrate can impose is [insert maximum penalty or term]

Schedule 2 Fees

(Clauses 12 and 13)

Part 1 Court fees

Item	Matter for which fee payable	Fee
1	Filing a court attendance notice under Chapter 4 of the <i>Criminal Procedure Act 1986</i> to commence proceedings to which Parts 2–4 of that Chapter apply	\$95
2	Filing an application under Chapter 4 of the <i>Criminal Procedure Act 1986</i> to commence proceedings to which Part 5 of that Chapter applies, being proceedings in the Land and Environment Court (Class 5 of that Court's jurisdiction)	\$956

3	Filing an application to commence summary proceedings brought in the District Court, other than proceedings brought by the secretary of an industrial organisation of employees	\$1,889
4	Filing an application to the Local Court for annulment of conviction or sentence under Part 2 of the <i>Crimes (Appeal and Review) Act 2001</i>	\$95
5	Filing a notice of appeal, or an application for leave to appeal, to the District Court under Part 3 of the <i>Crimes (Appeal and Review) Act 2001</i> :	
	(a) in relation to a single offence	\$117
	(b) in relation to more than one offence arising from the same court appearance	\$183
6	Filing a notice of appeal, or an application for leave to appeal, to the Land and Environment Court under Part 4 of the <i>Crimes (Appeal and Review) Act 2001</i> (Class 6 or 7 of that Court's jurisdiction)	\$956
7	Issuing a certificate of conviction or dismissal	\$61
8	Retrieving, providing access to and furnishing a copy of any document (otherwise than as provided for by items 9 and 11):	
	(a) for up to 20 pages	\$13
	(b) for each 10 pages (or part thereof) after the first 20 pages	\$7
9	Retrieving and providing access to, but not furnishing a copy of, any file or box of files, where the file or box of files is retrieved from an off-site storage facility:	
	(a) standard retrieval request	\$82 per file or box of files
	(b) non-standard retrieval request (including an urgent retrieval request, a high or after hours priority retrieval request or a retrieval request for delivery to or from a regional location outside the Sydney metropolitan area)	Such additional fee incurred by a court
10	Supplying a duplicate recording of sound-recorded evidence—per disc	\$53
11	Providing a copy of any deposition or transcript (unless otherwise provided for under any other Act):	
	(a) for each page, where the matter being transcribed is under 3 months old:	
	(i) for up to 8 pages	\$91

(ii) for each page after the first 8 pages	\$11
(b) for each page, where the matter being transcribed is 3 months old or older:	
(i) for up to 8 pages	\$111
(ii) for each page after the first 8 pages	\$13

Part 2 Sheriff's fees

Item	Matter for which fee payable	Fee
1	Attending a view by a jury in criminal proceedings	\$188

Schedule 3 NSW Government agencies and statutory bodies required to pay court fees

(Clause 18)

Barangaroo Delivery Authority

Centennial Park and Moore Park Trust

Department of Finance, Services and Innovation, but only in relation to offences against the following Acts or the regulations made under them or the following regulation:

- (a) the *Associations Incorporation Act 2009*,
- (b) the *Australian Consumer Law (NSW)*,
- (c) the *Boarding Houses Act 2012*,
- (d) the *Community Land Management Act 1989*,
- (e) the *Contracts Review Act 1980*,
- (f) the *Conveyancers Licensing Act 2003*,
- (g) the *Co-operative Housing and Starr-Bowkett Societies Act 1998*,
- (h) the *Co-operatives National Law (NSW)*,
- (i) the *Electricity (Consumer Safety) Act 2004*,
- (j) the *Fair Trading Act 1987*,
- (k) the *Fitness Services (Pre-paid Fees) Act 2000*,
- (l) the *Funeral Funds Act 1979*,
- (m) the *Gas Supply (Consumer Safety) Regulation 2012*,

- (n) the *Holiday Parks (Long-term Casual Occupation) Act 2002*,
- (o) the *Home Building Act 1989*,
- (p) the *Landlord and Tenant Act 1899*,
- (q) the *Landlord and Tenant (Amendment) Act 1948*,
- (r) the *Motor Dealers and Repairers Act 2013*,
- (s) the *Partnership Act 1892*,
- (t) the *Pawnbrokers and Second-hand Dealers Act 1996*,
- (u) the *Plumbing and Drainage Act 2011*,
- (v) the *Prices Regulation Act 1948*,
- (w) the *Property, Stock and Business Agents Act 2002*,
- (x) the *Residential (Land Lease) Communities Act 2013*,
- (y) the *Residential Parks Act 1998*,
- (z) the *Residential Tenancies Act 2010*,
- (aa) the *Retirement Villages Act 1999*,
- (ab) the *Strata Schemes Management Act 1996*,
- (ac) the *Strata Schemes Management Act 2015*,
- (ad) the *Tattoo Parlours Act 2012*,
- (ad1) the *Tow Truck Industry Act 1998*,
- (ae) the *Travel Agents Act 1986*.

Department of Industry, but only in relation to offences against the following Acts or the regulations made under them:

- (a) the *Combat Sports Act 2013*,
- (b) the *Fisheries Act 1935*,
- (c) the *Fisheries Management Act 1994*,
- (d) the *Motor Vehicle Sports (Public Safety) Act 1985*,
- (e) the *Mount Panorama Motor Racing Act 1989*,
- (f) the *Sporting Venues Authorities Act 2008*,
- (g) the *Sydney Cricket and Sports Ground Act 1978*,

(h) the *Sydney Olympic Park Authority Act 2001*,

(i) the *Water Act 1912*,

(j) the *Water Management Act 2000*.

Department of Justice, but only in relation to offences against the following Acts or the regulations made under them:

(a) the *Civil and Administrative Tribunal Act 2013*,

(b) the *Crimes Act 1900*.

Destination NSW

Environment Protection Authority

Historic Houses Trust of New South Wales

Hunter Development Corporation

Independent Liquor and Gaming Authority

Lifetime Care and Support Authority

Local Land Services

Long Service Corporation

New South Wales Land and Housing Corporation

NSW Food Authority

NSW Self Insurance Corporation

NSW Trains

NSW Trustee and Guardian

Office of Environment and Heritage, Department of Planning and Environment, but only in relation to offences against the *National Parks and Wildlife Act 1974* or the regulations made under it

Parramatta Park Trust

Place Management NSW

Property NSW

Rail Corporation New South Wales

Rental Bond Board

Residual Transport Corporation

Roads and Maritime Services, but only in relation to offences against the following Acts or the

regulations made under them:

- (a) the *Heavy Vehicle National Law (NSW)*,
- (b) the *Marine Safety Act 1998*,
- (c) (Repealed)

The Royal Botanic Gardens and Domain Trust

SafeWork NSW

State Archives and Records Authority of New South Wales

State Insurance Regulatory Authority

State Transit Authority of NSW

Statutory State owned corporations (within the meaning of the *State Owned Corporations Act 1989*) that represent the Crown by express agreement of the voting shareholders as referred to in section 20F of that Act

Sydney Ferries

Sydney Metro

Sydney Olympic Park Authority

Sydney Trains

Teacher Housing Authority of New South Wales

UrbanGrowth NSW Development Corporation

Venues NSW

Western Sydney Parklands Trust

Zoological Parks Board of New South Wales

Schedule 4 Penalty notice offences

For the purposes of sections 336 and 337 of the Act:

- (a) each offence specified in this Schedule is an offence for which a penalty notice may be issued, and
- (b) the amount payable under the penalty notice is the amount specified in this Schedule for the offence.

Column 1

Column 2

Provision

Penalty

Offences under *Crimes Act 1900*

Section 117, if value of property or amount does not exceed \$300 \$300

Section 527C (1) \$350

Offences under *Drug Misuse and Trafficking Act 1985*

Section 10, if prohibited drug is other than cannabis leaf and:

(a) in the case of

3,4-Methylenedioxymethylamphetamine:

(i) in capsule form—does not exceed a small quantity, and

(ii) in any other form—is less than a traffickable quantity, or \$400

(b) in any other case—does not exceed a small quantity,

within the meaning of the *Drug Misuse and Trafficking Act 1985*

Offences under *Summary Offences Act 1988*

Section 4 (1) \$500

Section 4A (1) \$500

Section 6 \$200

Section 6A \$250

Section 9 \$1,100